

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR CONFIDENTIALITY OF
KENTUCKY UTILITIES COMPANY

)
) CASE NO. 89-216

O R D E R

Before the Commission is the petition of Kentucky Utilities Company ("KU") for confidential treatment of two recently executed coal supply contracts. Finding that Commission Regulation 807 KAR 5:056 precludes such treatment, the Commission denies KU's petition.

On May 12, 1989, KU entered into agreements with Royal Fuel Company and West Coal Corporation and with Shamrock Coal Company, Inc. for the supply of coal to its Brown Generating Station. In accordance with Commission Regulation 807 KAR 5:056, Section 1(7),¹ KU filed copies of these contracts with the Commission. Concurrently, it has petitioned the Commission, pursuant to Commission Regulation 807 KAR 5:001, Section 7, to afford confidential treatment to those provisions of both contracts which

¹ "At the time the fuel clause is initially filed, the utility shall submit copies of each fossil fuel purchase contract not otherwise on file with the commission and all other agreements, options or similar such documents, and all amendments and modifications thereof related to the procurement of fuel supply and purchased power. Incorporation by reference is permissible. Any changes in the documents, including price escalations, or any new agreements entered into after the initial submission, shall be submitted at the time they are entered into." [Emphasis added.]

relate to the escalation of the price components, calorific and ash adjustments, and force majeure.

KU contends that the contract provisions in question are "the most sensitive and difficult provisions to negotiate in a coal supply contract" and that their disclosure would "place KU, and correspondingly its customers, at a serious competitive disadvantage in negotiating provisions governing the same subject matters with other potential suppliers."² It further contends that complete disclosure of the contracts would deprive KU of "the strategy and opportunity of seeking to bargain for the most favorable mix of terms and conditions."³

KU proposes that the contract provisions in question be kept confidential indefinitely, subject to periodic review by the Commission. Once all of its coal contract negotiations are completed, KU maintains, the full text of the contracts could then be made available to the public. In the meantime, interested parties, such as the Attorney General, could view the contracts in their entirety after entering a written agreement to maintain their confidentiality.

The Commission has already visited this issue. In Case No. 9674,⁴ wherein Kentucky Power Company sought confidential

² KU Petition, page 1.

³ Id.

⁴ Case No. 9674, A Petition for Confidentiality of Coal Supply and Coal Transportation Contracts of Kentucky Power Company (December 22, 1986).

treatment for its coal supply and transportation contracts, the Commission rejected the notion that such contracts could be afforded confidential treatment. Denying Kentucky Power Company's petition, we declared:

[T]his confidentiality regulation [807 KAR 5:001, Section 7] is not applicable to coal supply and transportation documents filed pursuant to the requirements of the FAC regulation [807 KAR 5:056]. This is based on the mandatory language of paragraph (10) of the FAC regulation stating that such documents "shall be open and made available for public inspection" and the administrative history of the FAC regulation indicating the explicit rejection in 1978⁵ of utility requests to keep coal contracts confidential.

KU has advanced no argument to disturb the holding of our earlier decision.

Assuming arguendo that Commission Regulation 807 KAR 5:001, Section 7, was applicable in this instance, KU has failed to prove that the coal supply contracts merit confidential treatment. The regulation affords confidential treatment to information only when the party seeking such treatment demonstrates that its disclosure will cause competitive injury. Competitive injury results when competitors gain an unfair advantage from public disclosure of information not otherwise disclosed to the public. See KRS 61.878(1)(b). KU has failed to introduce any evidence of competitive injury resulting from the contracts' disclosure nor has it contended that disclosure is likely to cause such injury. Its alleged injuries will occur in obtaining coal supplies, not in the sale of electric power.

⁵ Id. at 4-5.

The Commission, having considered KU's application and being otherwise sufficiently advised, finds that Commission Regulation 807 KAR 5:056 precludes confidential treatment for an electric utility's coal supply and transportation contracts.

IT IS THEREFORE ORDERED that:

1. KU's petition of its coal supply contracts with Royal Fuel Company and West Coal Corporation and with Shamrock Coal Company, Inc. is denied.

2. The coal supply contracts in question shall be held and retained by the Commission as confidential for a period of 5 working days from the date of this Order, at the end of which the contracts shall be placed in the public file.

Done at Frankfort, Kentucky, this 7th day of November, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:

Executive Director